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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/443,834	04/10/2012	Byron Dom	50269-1461	8026

73066 7590 07/28/2017  
HICKMAN PALERMO BECKER BINGHAM / Yahoo Holdings  
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EXAMINER
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BOYCE, ANDRE D

ART UNIT	PAPER NUMBER
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3623

NOTIFICATION DATE	DELIVERY MODE
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07/28/2017

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* BYRON DOM and DEEPA PARANJPE

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Appeal 2016-004233  
Application 13/443,834<sup>1</sup>  
Technology Center 3600

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Before BRICE R. WINSOR, JON M. JURGOVAN, and  
NABEEL U. KHAN, *Administrative Patent Judges*.

WINSOR, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1–4 and 9–26, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b). Claims 5–8 are cancelled. App. Br. 33 (Claims App’x).

We affirm and designate a new ground of rejection within the provisions of 37 C.F.R. § 41.50(b).

STATEMENT OF THE CASE

Appellants’ disclosed “invention relates to statistics and, more specifically, to . . . determining, statistically, a credibility metric for online

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<sup>1</sup> The real party in interest identified by Appellants is Yahoo! Inc. App. Br. 2.

question answerers.” Spec. ¶ 2. Claims 1, 2, and 9, which are illustrative, read as follows:

1. A method of rating a particular user, the method comprising:  
maintaining, at an online service, ratings for each user of  
a plurality of users of the online service;  
wherein the plurality of users include a particular user;  
obtaining first statistics that indicate ratings of answers  
that:  
are provided by multiple users of a population,  
are answers to questions posed by a first set of  
users, and  
include a plurality of answers that are provided by  
users other than the particular user;  
obtaining second statistics that are:  
specific to the particular user, and  
indicate one or more ratings of one or more  
answers provided by the particular user;  
wherein the one or more answers provided by the  
particular user are answers to questions posed by  
one or more second users;  
based on both the first statistics and the second statistics,  
estimating a rating for the particular user;  
wherein the method is performed by one or more  
computing devices.
2. A method of rating a particular user, the method comprising:  
maintaining, at an online service, a rating for each user of  
a plurality of users of the online service;

obtaining first statistics that indicate ratings of  
submissions of members of the online service;  
wherein the rating for each of the members is an estimate  
of quality of submissions of said each member to  
the online service;  
obtaining second statistics that:  
are specific to the particular user, and  
indicate one or more ratings of one or more  
submissions provided by the particular user;  
based on both the first statistics and the second statistics,  
estimating a rating for the particular user;  
wherein, in estimating the rating, as a quantity of  
submissions submitted by the particular user  
increases, an influence that the second statistics  
have on the rating of the particular user increases  
and an influence that the first statistics has on the  
rating of the particular user decreases;  
wherein the method is performed by one or more  
computing devices.

9. The method of Claim 1, wherein the second statistics  
indicate a number of times an answer from the particular  
user was selected as the best answer among a plurality of  
answers.

Claims 1–4 and 9–26 stand rejected under 35 U.S.C. § 101 as being  
directed to non-statutory subject matter, i.e., an abstract idea. *See* Final Act.  
2–3.

Claims 2, 22, 24, and 26 stand rejected under 35 U.S.C. § 102(b)<sup>2</sup> as being anticipated by Zacharia (US 6,892,178 B1; May 10, 2005). *See* Final Act. 3–8.

Claims 1, 3, 4, 9–21, 23, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zacharia and Park et al. (US 2007/0219958 A1; Sept. 20, 2007; hereinafter “Park”). *See* Final Act. 9–16.

Rather than repeat the arguments here, we refer to the Briefs (“App. Br.” filed Aug. 24, 2015; “Reply Br.” filed Mar. 10, 2016) and the Specification (“Spec.” filed Apr. 10, 2012) for the positions of Appellants and the Final Office Action (“Final Act.” mailed Feb. 11, 2015) and Examiner’s Answer (“Ans.” mailed Feb. 3, 2016) for the reasoning, findings, and conclusions of the Examiner. Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2013).

## ISSUES

Appellants’ contentions present the following issues:

Whether the Examiner errs in concluding claims 1–4 and 9–26 are directed to non-statutory subject matter, i.e., an abstract idea.

Whether the Examiner errs in finding Zacharia discloses

obtaining second statistics that: are specific to the particular user, and indicate one or more ratings of one or more submissions

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<sup>2</sup> All prior art rejections are under the provisions of 35 U.S.C. in effect prior to the effective date of the Leahy-Smith America Invents Act of 2011. *See, e.g.,* Final Act. 3.

provided by the particular user; based on both the first statistics and the second statistics, estimating a rating for the particular user; wherein, in estimating the rating, as a quantity of submissions submitted by the particular user increases, an influence that the second statistics have on the rating of the particular user increases and an influence that the first statistics has on the rating of the particular user decreases;

as recited in claim 2.

Whether the Examiner errs in finding the combination of Zacharia and Park teaches or suggests

obtaining first statistics that indicate ratings of answers that: are provided by multiple users of a population, are answers to questions posed by a first set of users, and include a plurality of answers that are provided by users other than the particular user; obtaining second statistics that are: specific to the particular user, and , , based on both the first statistics and the second statistics, estimating a rating for the particular user; wherein the method is performed by one or more computing devices,

as recited in claim 1.

## ANALYSIS

### REJECTION UNDER 35 U.S.C. § 101

Patent eligibility is a question of law that is reviewable *de novo*. *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012). To be statutorily patentable, the subject matter of an invention must be a “new and useful process, machine, manufacture, or composition of matter, or [a] new and useful improvement thereof.” 35 U.S.C. § 101. The Supreme Court has held that there are implicit exceptions to the categories of patentable subject matter identified in § 101, including (1) laws of nature, (2) natural phenomena, and (3) abstract ideas. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*,

134 S. Ct. 2347, 2355 (2014). Further, the Court has “set forth a framework for distinguishing patents that claim [1] laws of nature, [2] natural phenomena, and [3] abstract ideas from those that claim patent-eligible applications of those concepts.” *Id.*, citing *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S. Ct. 1289 (2012). The evaluation follows the two-part analysis set forth in *Mayo*: (1) determine whether the claim is directed to a patent-ineligible concept, e.g., an abstract idea; and (2) if an abstract idea is present in the claim, determine whether any element, or combination of elements, in the claim is sufficient to ensure that the claim amounts to significantly more than the abstract idea itself. *See Alice*, 134 S. Ct. at 2355.

#### *Procedural Argument*

Appellants contend the Examiner fails to establish a prima case that the claims are directed to an abstract idea. App. Br. 6. Appellants argue the Examiner

alleges, without providing any reasoned rationale, that “rating a particular user” is an abstract idea and that Appellants’ claims are directed to this alleged abstract idea. These conclusory statements do not amount to the rationale required by [“2014 Interim Guidance on Patent Subject Matter Eligibility,” 79 Fed. Reg. 74618 (“Guidance”),] and [Manual of Patent Examining Procedure (MPEP)] §§ 2106(II)(B)(2) & 2106(III)].

*Id.* We are not persuaded of error.

This Board is empowered to “review adverse *decisions* of examiners upon applications for patents.” 35 U.S.C. § 6(b)(1) (emphasis added); *see also* 37 C.F.R. § 41.31(a)(1). Our reviewing court has explained

all that is required of the [USPTO] to meet its prima facie burden of production is to set forth the statutory basis of the rejection and the reference or references relied upon in a sufficiently

articulate and informative manner as to meet the notice requirement of § 132. As the statute itself instructs, the examiner must “notify the applicant,” “stating the reasons for such rejection,” “together with such information and references as may be useful in judging the propriety of continuing prosecution of his application.” 35 U.S.C. § 132.

*In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011). We have reviewed the decision to reject the claims for patent-ineligibility articulated by the Examiner (*see* Final Act. 2–3; Ans. 7–12) and find it meets the notice requirements of 35 U.S.C. § 132. The Examiner has set forth the statutory basis for the rejection (a judicial exception to 35 U.S.C. § 101) and explained the rejection in sufficient detail to permit Appellants to respond meaningfully. The adequacy of the statement of rejection is demonstrated by the fact that Appellants were able to respond to the substance of the rejection. *See generally*, App. Br. 5–15; Reply Br. 4–17.

Matters such as whether the Examiner correctly followed Office rules, procedures, or guidance relate to the conduct of prosecution rather than the decision itself, and are reviewable by petition to the Director of the US Patent and Trademark Office or as delegated by the Director. *See* 37 C.F.R. § 1.181 *et seq.*; *see also* MPEP § 1201 (“The Board will not ordinarily hear a question that should be decided by the Director on petition . . .”).

*Statutory Classes of the Claims*

Claims 1–4, 9–13, 23, and 24

Claims 1–4, 9–13, 23, and 24 are directed to “[a] method of rating a particular user, the method comprising: [a series of recited acts].” App. Br. (Claims App’x) 31 (claim 1). A process is a series of acts, and in patent claims “process” and “method” are generally treated as synonymous. *See In re Nuijten*, 500 F.3d 1346, 1354–55 (Fed. Cir. 2007). We conclude claims 1



et al. are directed to a “process” which is one of the four classes of patent eligible subject matter specified by 35 U.S.C. § 101. We, therefore, look to the first step of the *Mayo/Alice* analysis to determine if these claims are directed to a judicial exception to the categories of patent-eligible subject matter.

Claims 14–22, 25, and 26

Claims 14–22, 25, and 26 are directed to “[o]ne or more non-transitory storage media storing instructions which, when executed by one or more processors, cause: [a series of recited acts].” App. Br. (Claims App’x) 34 (claim 14). Unlike claims 1 et al., claims 14 et al. are not directed to a process, but rather are directed to a “non-transitory storage media” upon which the acts that, “when executed by one or more processors,” would make up a process are memorialized. Claims 14 et al. do not recite any functional relationship between the “non-transitory storage media storing instructions” and the “one or more processors.” For example, there is no recitation that the media is readable to provide instructions to the processors.

We conclude claims 14 et al, are directed to non-functional descriptive matter, in accordance with what is sometimes known as the printed matter doctrine. In other words, claims 14 et al. do not preclude embodiments that are merely printed instructions on paper, which is a “non-transitory storage medium.” “[P]rinted matter by itself is not patentable subject matter, because [it is] non-statutory.” *In re Miller*, 418 F.2d 1392, 1396 (CCPA 1969).

Accordingly, we conclude claims 14 et al. are not within any statutory class of patent-eligible subject matter and are, therefore, patent-ineligible under 35 U.S.C. § 101. Accordingly, we sustain the rejection of claims 14–

22, 25, and 26 under 35 U.S.C. § 101 for at least this reason. Because Appellants have not had the opportunity to respond, with argument or amendment, to this reason for holding claims 14 et al. to be patent-ineligible, we designate our conclusion that claims 14–22, 25, and 26 are not within any statutory class of patent-eligible subject matter to be a new ground of rejection under our authority under 37 C.F.R. § 41.50(b).

The foregoing notwithstanding, in the interests of administrative and judicial economy, we proceed to the first step of the *Mayo/Alice* analysis with regard to claim 14 et al., considering these claims together with claims 1 et al.

#### *Independent Claims*

##### *Mayo/Alice* Step 1

The Federal Circuit has held that if a method can be performed by human thought alone, or by a human using pen and paper, it is merely an abstract idea and is not patent-eligible under § 101. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372–73 (Fed. Cir. 2011) (“[A] method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.”); *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972) (“[p]henomena of nature . . . , mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work.” (emphasis added)). Additionally, mental processes remain unpatentable even when automated to reduce the burden on the user of what once could have been done with pen and paper. *CyberSource*, 654 F.3d at 1375 (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*.”).

By way of example, but for the recitations of “maintaining [the ratings] at an online service” and “perform[ing] [the method] by one or more computing devices,” the broadest reasonable interpretation of claim 1 reads on grading on a curve. Consider that a student who has taken an exam is a particular user to be rated, i.e., assigned a grade. Further, consider that the particular user/student is one of a plurality of users/students who took the exam, either in the same class or in a plurality of sessions of the class that are concurrent or spread over a period of time. Consider also that the exam was composed by one or more course instructors, i.e., that the exam is a collection of questions posed by a first set of users including at least one second user, and the completed exams comprise answers to those questions, that include answers provided by users/students other than the particular user/student. Consider that the collective raw exam scores, or some derivative of the raw scores such as a statistical distribution or mean of the scores of all of the users/students who took the exam, is the first statistic. Consider that the second statistic is the raw exam score, i.e., one or more ratings of one or more answers provided by the particular user/student to questions posed by one or more second users. The grade, i.e., rating, of the particular user is then ascertained based on the particular user/student’s answers (the second statistics) and the answers provided by the class as a whole (the first statistics). Thus, under a broad but reasonable interpretation, claim 1 is directed to an abstract concept that can be performed entirely mentally or with pen and paper,

Furthermore, the mental process described by the claim encompasses a method of organizing human activity (e.g., “grading on a curve,” i.e., progress in school), *see Alice*, 134 S. Ct. at 2356, and describes a “well-

known” algorithm, *id.* at 2358, albeit expressed in the claims in prose rather than typical mathematical notation. Indeed, Appellants’ Specification characterizes the invention as related to “statistics” (Spec. ¶ 2), which is “a branch of mathematics dealing with the collection, interpretation, and presentation of masses of numerical data” (MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 1149 (10th ed. 1999) (def. 1)).

Therefore, we agree with the Examiner that claim 1 is directed to an abstract idea. We find nothing in remaining independent claims 2, 14, and 22 that leads us to conclude that those claims are not also directed to abstract ideas. For example, the limitation recited in claims 2 and 22 that “as a quantity of submissions submitted by the particular user increases, an influence that the second statistics have on the rating of the particular user increases and an influence that the first statistics has on the rating of the particular user decreases,” expresses nothing more than an additional refinement of an algorithm or mental process.

*Mayo/Alice Step 2*

Having found the claims to be directed to an abstract idea, we turn to the second step of the *Mayo/Alice* test to determine whether any element, or combination of elements, in the claim is sufficient to ensure that the claim amounts to significantly more than the abstract idea itself. *See Alice*, 134 S. Ct. at 2355.

Looking first to the independent claims 1, 2, 14, and 22, the algorithms recited in the independent claims do not control or improve another process or technology, *see Diamond v. Diehr*, 450 U.S. 175 (1981), improve how the computer itself functions, *see Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), or change how the internet responds

to user input, *see DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). The recited steps of the claims are directed to collection and manipulation of data, which many cases have found to be patent-ineligible. *See, e.g., Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1327 (Fed. Cir. 2017) (“creating an index and using that index to search for and retrieve data”); *Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (collection, manipulation, and display of data); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (customizing information and presenting it to users based on particular characteristics); *Content Extraction and Transmission LLC v. Wells Fargo Bank, National Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (“collecting data, . . . recognizing certain data within the collected data set, and . . . storing that recognized data in a memory”). At most, the recitations of the independent claims limit the algorithm to a particular technological environment. However, “the prohibition against patenting abstract ideas cannot be circumvented by attempting to limit the use of [the idea] to a particular technological environment.” *Alice*, 134 S. Ct. at 2358 (bracketed material in original) (quoting *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (citing *Parker v. Flook*, 437 U.S. 584 (1978))). Therefore, we conclude that the independent claims do no more than recite the abstract idea and “apply it” with the “online service” and “one or more computing devices,” i.e., conventional computer technology. *See Alice*, 134 S. Ct. at 2358. This does not render an abstract idea non-abstract: there must be more. *See id.*

We also are not persuaded by Appellants’ argument that “no preemption will occur.” App. Br. 7. “While preemption may signal patent

ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Id.* Nor do we agree that the claims recite “substantive limitations about **capturing specific types of actions within an online service.**” App. Br. 7. As discussed above, the claim limitations are not directed how actions (“answers”) are captured or collected, but rather to how information about the actions, collected in an un-recited manner, is manipulated.

We agree with the Examiner that independent claims 1, 2, 14, and 22 “do not provide meaningful limitation(s) to transform the abstract idea into a patent eligible application of the abstract idea such that the claim(s) amounts to significantly more than the abstract idea itself.” Final Act. 3.

#### *Dependent Claims*

Turning to the dependent claims, we conclude that they merely recite further details of the algorithm or mental process (claims 3, 4, 9, 10, 15–18, and 23–26) or display of the results of the algorithm or mental process (claims 11–13 and 19–21), all using computing devices and networks in a conventional manner.

#### *Summary*

Appellants have not persuaded us of error in the rejection of claims 1–4 and 9–26 under 35 U.S.C. § 101 as being directed to a patent-ineligible abstract idea. Accordingly, we sustain the rejection of claims 1–4 and 9–26 under § 101.

REJECTION UNDER 35 U.S.C. § 102(B)

[The USPTO] applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification.

*In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Although claims are interpreted in light of the Specification, “limitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993). Furthermore, the comparison of references to the prior art is not an *ipsissimis verbis* test. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

The Examiner finds Zacharia discloses all the limitations of claim 2. Final Act. 3–6.

Appellants contend Zacharia discloses rating entities, whereas claim 2 recites rating submissions. Reply Br. 2. We disagree. Mapping Zacharia to claim 2, we conclude and find that Zacharia's “rater reputation of a first entity” (Zacharia col. 8, l. 4) falls within the broadest reasonable interpretation of a “rating [of] a particular user” (claim 2) that is an “estimate of quality of submissions . . . to the online service” (*id.*) and that ratings by entities of other entities (Zacharia col. 8, ll. 20–28) fall within the broadest reasonable interpretation of “submissions” (claim 2). We further conclude and find that Zacharia's “rating predictabilit[ies]” (Zacharia col. 8, ll. 23–28), fall within the broadest reasonable interpretation of “statistics that indicate ratings of submissions” (claim 2).

Appellants contend as follows:

*Zacharia* fails to anticipate Claim 2[’s] feature of estimating a rating for a user based on first statistics of ratings of submissions and based on second statistics of those ratings of submissions that were submitted by the user, such that as the quantity of submissions that were submitted by the user increases, the first statistics influence on the rating decreases and the second statistics influence increases.

Instead, *Zacharia* describes adjusting reputation ratings given to a rated entity and adjusting a reputation rating of a rater. In the cited paragraph describing Sporn’s technique (col. 3, ll. 39–47), *Zacharia* describes damping the ratings given to a rated entity. However, the cited portion is not related in any way to **the quantity of submissions of a rated entity** and is not based on three variables: quantity of submissions, first statistics, and second statistics as featured in Claim 2.

App. Br. 27. We agree with Appellants. As mapped above, *Zacharia* does disclose estimating the rater reputation from the rater’s rating predictabilities, i.e., “statistics that indicate ratings of submissions” (claim 1), which are in turn determined by comparing the rating given to a rated entity, i.e., “submission” (*id.*), by the rater to the ratings given to the rated entity by a plurality of other rating entities. However, *Zacharia*’s ratings map to the recited “submissions” (*id.*), not to ratings of submissions. We find nothing in the cited passages of *Zacharia* that discloses that the rater reputation is estimated based on the rating *predictability* of the rater, i.e., “second statistics” (*id.*), and the rating *predictability* of a plurality of other rating entities, i.e., “first statistics.”

Therefore, we are constrained by this record to not sustain the rejection under § 102(b) of (1) claim 2; (2) independent claim 22, which was rejected on substantially the same basis as claim 2 (Final Act. 6); and (3) claims 24 and 26, which depend from claims 2 and 22 respectively.



REJECTION UNDER 35 U.S.C. § 103(A)

The Examiner finds the combination of Zacharia and Park teaches or suggests all of the limitations of claim 1, and concluded that it would have been obvious to a person of ordinary skill in the art to combine Zacharia and Park

to include wherein the second statistics indicate a number of times an answer from the particular user was selected as the best answer among a plurality of answers, and the questions are limited to a particular category in Zacharia, as seen in Park et al, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Final Act. 13–14. In so finding, the Examiner relies on Zacharia’s disclosure in a similar fashion to that discussed for claim 2 (*see supra*). *Compare* Final Act. 9–10, *with id.* at 3–4. For reasons similar to those set forth above regarding claim 2, we disagree with the Examiner’s findings. We are, therefore, constrained by this record to not sustain the rejection under § 103(a) of (1) claim 1; (2) independent claim 14, which was rejected on substantially the same basis as claim 1 (Final Act. 16); and (3) claims 3, 4, 9–13, 15–21, 23, and 25, which variously depend, directly or indirectly, from claims 1 and 14.

DECISION

The rejection of each of the appealed claims is sustained on at least one of the grounds specified in the rejection appealed from. Therefore, the decision of the Examiner to reject claims 1–4 and 9–26 is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

We designate the affirmance of the rejection of claims 14–22, 25, and 26 under 35 U.S.C. § 101 as being directed to patent-ineligible printed matter as a new ground of rejection.

Regarding the affirmed rejection(s), 37 C.F.R. § 41.52(a)(1) provides “Appellant may file a single request for rehearing within two months from the date of the original decision of the Board.”

In addition to affirming the Examiner’s rejection(s) of one or more claims, this decision contains new grounds of rejection pursuant to 37 C.F.R. § 41.50(b). Section 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

Section 41.50(b) also provides that Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same Record.

Should Appellant elect to prosecute further before the Examiner pursuant to 37 C.F.R. § 41.50(b)(1), in order to preserve the right to seek review under 35 U.S.C. §§ 141 or 145 with respect to the affirmed rejection, the effective date of the affirmance is deferred until conclusion of the prosecution before the Examiner unless, as a mere incident to the limited prosecution, the affirmed rejection is overcome.

If Appellant elects prosecution before the Examiner and this does not result in allowance of the application, abandonment or a second appeal, this case should be returned to the Patent Trial and Appeal Board for final action on the affirmed rejection, including any timely request for rehearing thereof.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. §§ 41.50(f), 41.52(b) (2013).

AFFIRMED  
37 C.F.R. § 41.50(b)